

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, SS.

No. SJC-4350

IN THE MATTER OF THE DORCHESTER DIVISION
OF THE DISTRICT COURT DEPARTMENT OF
THE TRIAL COURT

COMMISSIONER'S REPORT

GOVERNMENT DOCUMENTS
COLLECTION

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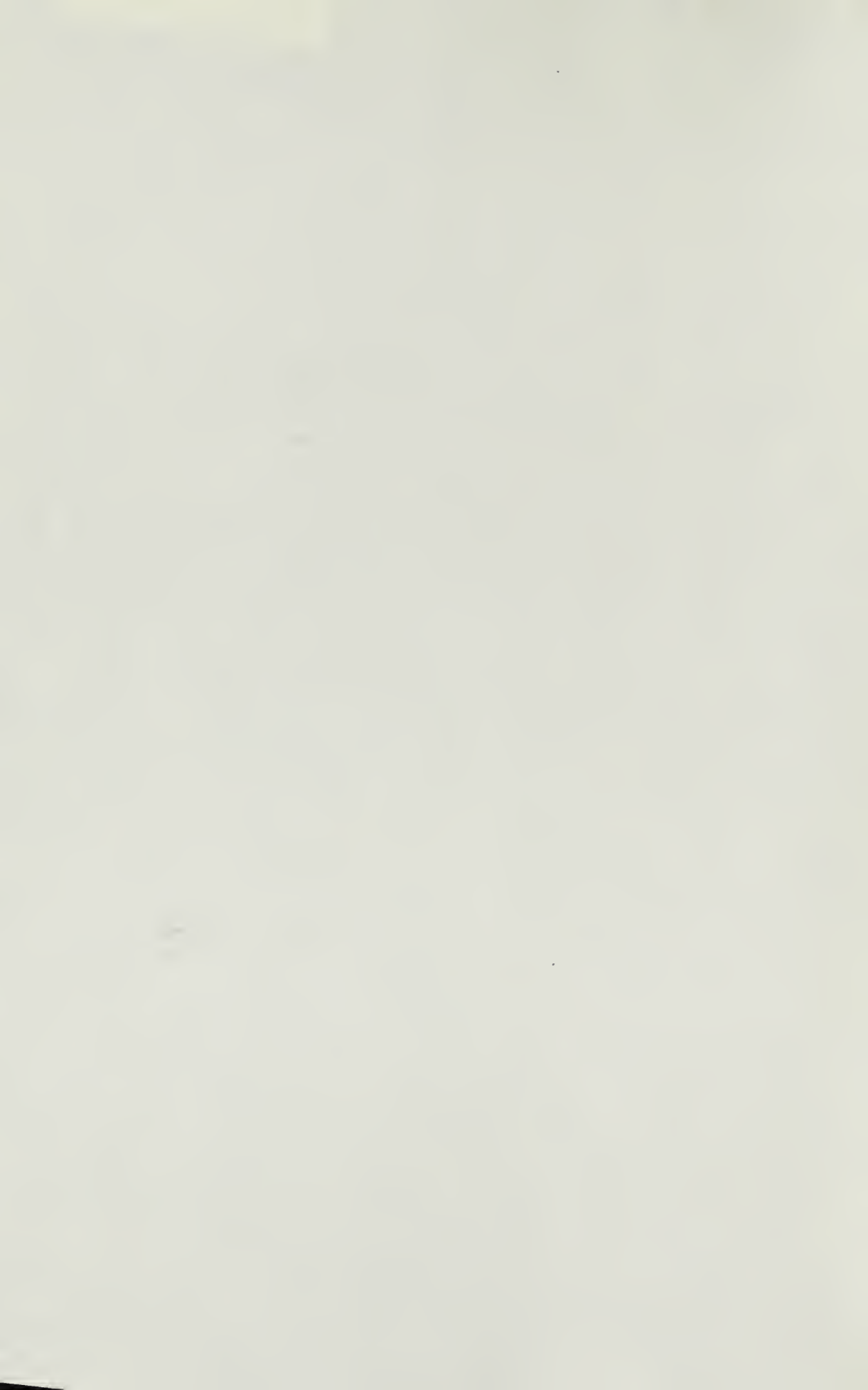


TABLE OF CONTENTS

Statement of the Case

1. Nature of the Proceeding	3
2. Conduct of the Investigation	3
3. Scope of the Investigation	4

Findings of Fact 5

1. The Dorchester District Court	5
2. Volume and Type of Business Conducted at the Dorchester Court	7
3. Court Personnel, Including Lawyers and Witnesses, who Appear in the Dorchester Court	8
a. The Justices	8
b. The Clerk-Magistrate	12
c. The Chief Probation Officer	14
d. The Probation Department	16
e. Court Officers	16
f. Lawyers Appearing in the Dorchester Court	17
g. Police Officers Appearing in the Dorchester Court	17
h. Defendants Appearing Before the Dorchester Court	18
4. Administration of the Dorchester Court	19
a. Hiring Practices	19
b. Control of the Court House	21
5. The First Session	22
6. Judge King's Treatment of Court Personnel, Defendants, Lawyers and Witnesses with Whom he Deals in his Official Capacity as a Judge	30
a. Treatment of Court Personnel	32
i. Probation Officers	32
ii. Court Officers	38
b. Treatment of Lawyers	39
c. Treatment of Defendants	39
d. Treatment of Police Officers	45
7. Chief Justice Zoll's Directives to Judge King	46
8. The Lisa May Case	48

Conclusion	48
Recommendation	51

STATEMENT OF THE CASE

1. Nature of the Proceeding:

By an Order dated December 8, 1986, The Supreme Judicial Court appointed a Special Master and Commissioner to conduct a prompt investigation of the practices and procedures of the Dorchester Division of District Court Department of the Trial Court ("Dorchester Court"). This Report is submitted pursuant to that Order and includes the Commissioner's findings of facts, conclusions and recommendations.

2. Conduct of the Investigation:

The Commissioner heard testimony from over 115 witnesses who testified under oath and who appeared either voluntarily or by subpoena; received exhibits including statements of witnesses, copies of correspondence, court documents and tapes of court proceedings¹. Witnesses interviewed were in six categories: (1) present court personnel from the probation department, the Clerk-Magistrate's office, court officers, and the three present Justices assigned to the Dorchester

¹A list of the witnesses interviewed, the exhibits and the approximately 3,000 pages of recorded testimony are submitted with this Report.

Court; (ii) former court personnel; (iii) lawyers who have appeared with some regularity in the Dorchester Court; (iv) police officers who have either in the past or present been assigned to or appeared as witnesses in the Dorchester Court; (v) court union representatives; and (vi) past and present community leaders. Identification of potential witnesses was obvious in the case of present court personnel and additional witnesses interviewed were suggested by the present Justices of the Court, the Clerk-Magistrate and the Chief Probation Officer.² Six tapes of court proceedings were reviewed. Three tapes were to verify alleged statements made by Judge Paul H. King ("Judge King") and three tapes were randomly selected by the Commissioner. With the exception of one witness, all interviews were conducted in a secluded room at the Old Cambridge District Court at 121 Third Street, Cambridge, Massachusetts, which was made available by the Trial Court, and

²Some of the suggested witnesses were not available to be interviewed; all but two of Judge Paul H. King's original list of 41 witnesses were interviewed, but only a few witnesses contained on a supplemental list submitted by Judge King on January 20, 1987 were interviewed since most of those witnesses were lawyers whose testimony would in all likelihood only be repetitive of the testimony of the many lawyers already interviewed.

which provided a private and dignified atmosphere for conducting this investigation.

3. Scope of the Investigation:

An investigation of the "practices and procedures" of the Dorchester Court is a broad mandate and each witness was given an opportunity to respond to questions consistent with that mandate. It became very clear early in the investigation, however, that Judge King was the primary subject of complaints concerning the Dorchester Court and, although the scope of this investigation remained broad, emphasis was given to the complaints concerning Judge King's practices and procedures as the First Justice of the Dorchester Court.

FINDINGS OF FACT

1. The Dorchester District Court:

This Report does not include findings concerning all of the practices and procedures of the Dorchester Court but rather contains those findings which are relevant to the more serious complaints concerning the Court which were identified during the course of the investigation.

Apart from the individuals who are employed at the Dorchester Court, the physical plant itself is a contributing factor to the many problems



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experienced by court personnel, defendants, lawyers, and witnesses, including police officers, who participate in the Dorchester Court. Those working at the court are either located in the court building where everyone is cramped for space or in six trailers located on the side yard of the court. Closets and bathrooms in the court itself are used for filing court papers. The acoustics of the court rooms make it difficult to be heard. The appearance of the Court building with its attendant trailer lot detracts from the dignity required for the conduct of judicial business. There are inadequate bathroom facilities for court personnel. The Justices of the Court, the Clerk-Magistrate and Chief Probation Officer are relegated to small and crowded quarters which makes it difficult for them to conduct their administrative duties. The four police officers assigned to the Court and police officers appearing as witnesses in the Court are confined to a small room located in the probation department. The prosecutors' office is located in a trailer outside the Court and there are no areas available for defendants to confer with their counsel. The Dorchester Court facility breeds



discontent for those who work at the court and for those required to appear in the court. Regardless of the deplorable physical environment, however, most court personnel interviewed accept the poor working conditions as a condition of their employment. A new or renovated court facility is urgently needed to promote and preserve the dignity of judicial business being conducted at the Dorchester Court.

2. Volume and Type of Business Conducted at the Dorchester Court:

A review of the 1985 Annual Report of the Massachusetts Trial Court, at pages 60-61,³ compares the criminal filings and dispositions in each of the District Court Divisions for fiscal year 1985. By comparison to other District Courts having the same number of judges, the Dorchester Court is a busy court which deals with a large volume of serious crimes involving assault, breaking and entering, larceny and fraud, and narcotics. The type of criminal business conducted at the Dorchester Court, coupled with the crowded conditions of the court, make it a difficult place

³Commissioner's Exhibit 1.

to work and have contributed to the problems existing in this Court.

3. Court Personnel, including Lawyers and Witnesses, who appear in the Dorchester Court:

(a) The Justices:

Judge King was an accountant prior to graduating from law school, was admitted to practice law in 1955, and was engaged in private practice as a tax lawyer before being appointed a Justice of the Dorchester Court in December, 1967. Judge King succeeded as First Justice in 1973 after Jerome P. Troy was disbarred and removed as a Judge by this Court. When Judge King assumed the responsibilities of First Justice of the Dorchester Court, he took over a Court that had been demoralized by Judge Troy's prolonged disbarment proceedings and the inefficiencies resulting from a lack of direction and/or authority during that period. During the early years of Judge King's tenure as First Justice, he met regularly with community groups and organizations. As a result of this interaction between Judge King and an advisory committee representing several different community organizations, Judge King instituted or supported several programs

which attempted to address the expressed concerns of the community. Community leaders interviewed appreciated Judge King's efforts to address these concerns through his support of the Urban Court Program which provided more individualized help for defendants, TASK, which was a drug treatment program, Night Court which existed for seven to eight years from 6:00 P.M. to 8:00 P.M. Wednesday nights to allow defendants to attend court and consult with their probation officers after usual working hours, ASAP for alcohol and drug dependent defendants, and the Community Service Program or Voluntary Alternative Work Program of which more will be said later in this Report. After Judge King became First Justice, he invoked strict procedures relating primarily to the probation department which made that department one of the most efficient in the District Court system. He demanded that all court personnel, lawyers, defendants and witnesses, including police officers, be on time for their scheduled appearances, that cases not be continued, and that those who appeared in his Court be prepared. Tardiness, delay or unpreparedness were not tolerated by Judge King, and this obsession for efficiency is,

on the one hand, one of his many contributions to the Dorchester Court and yet, on the other hand, has led to the many complaints documented in this Report.

Judge James W. Dolan ("Judge Dolan") was admitted to the bar in 1965 and was appointed as a Special Justice of the Dorchester Court in December, 1973.⁴ At that time, Judge King had become First Justice. In 1977, Judge Dolan was appointed Regional Administrative Justice for the Second Judicial District of Suffolk County by Chief Justice Zoll, and, although the Dorchester Court was included in this Administrative District, neither Judge Dolan nor Judge King perceived any conflict nor were they uncomfortable with the fact that Judge King was the First Justice of Judge Dolan's assigned Court while at the same time, Judge Dolan was the Chief Justice's administrative representative for the Dorchester Court⁵. In fact, both Judges acknowledged a close

⁴Although Judge Dolan was initially appointed as a Special Justice, he sat full time, mostly in the Dorchester Court, and in 1976, when the option became available, he elected to become a full-time Justice of that Court.

⁵By letter dated December 2, 1986, Judge Dolan tendered his resignation as Administrative Justice citing problems with Judge King as the reason. See Dolan Exhibit 1.

working relationship through the years and, until recently, Judge Dolan followed without complaint the practices and procedures for the Dorchester Court dictated by Judge King. Without exception, every credible witness interviewed stated without reservation that Judge Dolan was patient, dignified and courteous to court personnel, lawyers, defendants, and witnesses who appeared in his Court. This investigation has revealed no facts or even allegations of impropriety on the part of Judge Dolan. Judge Dolan has established, maintained, enforced and observed high standards of conduct consistent with his position as a Justice of the Dorchester Court.

Darrell L. Outlaw ("Judge Outlaw") is the third Justice in seniority assigned to the Dorchester Court. Prior to his admission to the bar in 1962, Judge Outlaw had been a probation officer in the Suffolk Superior Court and, after he was admitted to practice law, was in the private practice of law for five years, was Assistant Corporation Counsel for the City of Boston for approximately twelve years, and for the two years prior to his appointment as a Justice of the Dorchester Court in February, 1981, was employed

by the Massachusetts Committee Against Discrimination. As a District Court Justice, Judge Outlaw has demonstrated a concern for minorities brought before the criminal justice system and has been an advocate for affirmative action in the hiring of court personnel at the Dorchester Court. The only complaint reported in these proceedings against Judge Outlaw was that he did not want to conduct court beyond 4:30 P.M. The evidence is clear, however, that he was willing and available to work during normal court hours and on many occasions stayed beyond the 4:30 P.M. closing time to conduct court business. Practically without exception, every credible witness interviewed stated that Judge Outlaw was patient, dignified and courteous to court personnel, lawyers, defendants, and witnesses who appeared in his court. This investigation has revealed no facts or even allegations of impropriety on the part of Judge Outlaw. Judge Outlaw has established, maintained, enforced, and observed high standards of conduct consistent with his position as a Justice of the Dorchester Court.

(b) The Clerk-Magistrate:

Richard J. Dwyer ("Dwyer") was appointed as Clerk-Magistrate of the Dorchester Court in 1981

by Governor King. Dwyer previously served as the Chief Probation Officer at the Stoughton District Court from 1966 to 1975 with an eight-month term as Acting Clerk of that Court in 1973. He was appointed by Judge King as the Court Administrator of the Dorchester Court and served in that capacity from 1975 to 1977 until his appointment by Judge King as Chief Probation Officer of the Dorchester Court where he served from 1977 to his appointment as Clerk-Magistrate in 1981. Dwyer had a favorable relationship with Judge King which resulted not only in his appointment by Judge King as the Court Administrator and Chief Probation Officer, but also his appointment as Clerk-Magistrate by Judge King's brother when he was Governor. There have been allegations by a few witnesses that Dwyer's participation in this investigation was motivated by Dwyer's desire to assert his independence from Judge King by attempting to have him removed as the First Justice. For example, a close friend of Judge King has stated that Dwyer is part of a conspiracy to remove Judge King. This is not a fact. Dwyer's actions in assisting with this investigation clearly appear to be motivated by his sincere

concern for the manner in which Judge King has treated numerous court personnel over a period of years. This investigation has revealed no facts which challenge either Dwyer's competency or efficiency in administering the Clerk's Office at the Dorchester Court. Dwyer is an experienced and competent court administrator who has demonstrated the high standards of conduct required by his office.

(c) The Chief Probation Officer:

Bernard L. Fitzgerald ("Fitzgerald") was appointed by Judge King to succeed Dwyer as Chief Probation Officer ("CPO") in 1981. Fitzgerald was originally appointed as a probation officer in the Dorchester Court by Judge Troy in 1971 and, in 1978 or 1979, had been appointed as an Assistant Chief Probation Officer by Judge King. Since Fitzgerald's appointment as CPO, he has had little or no authority in running his department. Judge King has exercised full authority for the hiring and promotion of all personnel in the probation department. He has ignored recommendations for both the hiring and promotion of probation personnel by a screening committee consisting of Fitzgerald and others with seniority in the proba-

tion department; has conducted meetings with probation officers without notifying Fitzgerald or having him present at these meetings; has controlled assignments within the probation department; and has used this power of assignment to punish probation officers who he decides are incompetent or who challenge or have objected to his treatment of them or of other court personnel. Fitzgerald testified that after his appointment as CPO, he considered himself a friend and ally of Judge King, but in the past two years found it more and more difficult to defend some of his actions concerning his treatment of probation officers. The complaints from probation officers were so numerous that the situation became intolerable for Fitzgerald and, beginning in January 1985, he kept daily notes concerning Judge King's conduct⁶. These notes have been marked as an exhibit in this investigation and have been used as a source of specific facts concerning a pattern of Judge King's conduct in his role as First Justice of the Dorchester Court. This investigation has revealed no facts or even allegations of impropriety on the part of Fitzgerald.

⁶See Fitzgerald Exhibit 3.

(d) The Probation Department:

Most of the present and several former probation officers have been interviewed. As in any organization, there are some who either lack the intelligence or motivation to be excellent probation officers, but, to Judge King's credit, the overwhelming majority of the probation officers at the Dorchester Court are competent, dedicated, and, because of constant pressure from Judge King, extremely thorough and prepared. Judge King takes probation seriously and, through his efforts, the probation department has become an efficient organization that has benefited both the defendants it supervises and the Court it serves.

(e) Court Officers:

The Court Officers serving the Dorchester Court have a difficult task in handling the number of defendants appearing in the Dorchester Court charged with serious crimes and maintaining quiet and decorum in the Court. Judge King exercises total control in hiring and supervising Court Officers and demands their strict adherence to his rules and procedures.

(f) Lawyers Appearing in the Dorchester Court:

During the course of this investigation, private and public counsel, as well as Assistant District Attorneys, were interviewed. The more recently admitted lawyers testified that their service in the Dorchester District Court provided a valuable learning experience. All cases originate in the First Session which is presided over by Judge King and all lawyers appearing in the Dorchester Court quickly learn that neither they nor their clients or witnesses can be late for Court, that they had to be prepared for their cases, and that continuances were not easily granted. More experienced lawyers interviewed were more candid than the newly admitted lawyers about their observations of Judge King's treatment of all persons appearing before him in the First Session. Those observations, as well as those of others concerning this treatment, will be addressed later in this Report.

(g) Police Officers Appearing in the
Dorchester Court:

Historically, there has been a conflict between Judge King and police officers appearing before him in the Dorchester Court. Part of this

conflict has resulted from Judge King's insistence that police officers be punctual and be prepared to prosecute their cases. This conflict was aggravated in 1980 as a result of Judge King's placing now Sergeant, and then officer, Michael Broderick in the dock when he arrived at 9:04 A.M. after having been defaulted at 9:00 A.M. as a defendant in an alleged police abuse case. Sergeant Broderick was later found not guilty of the charges by another Judge, but this incident and continuing harassment of police officers by Judge King, which will be discussed later, has done little to improve relations between police officers and Judge King. On the other hand, there were several police officers who testified that they had no complaints concerning their treatment by Judge King and, as with some lawyers who appear with regularity in the Dorchester Court and as with a small minority of court personnel, they testified that they have not observed any abusive treatment of persons appearing before Judge King.

(h) Defendants Appearing Before the
Dorchester Court:

Only one or two defendants who have appeared in the Dorchester Court have been interviewed and



findings in this Report concerning Judge King's treatment of defendants are made from the observations of lawyers and court personnel who were present in the First Session when Judge King was presiding.

4. Administration of the Dorchester Court:

Judge King's often quoted statement that "it will be done my way" is an apt description of how the Dorchester Court is administered. Over the years, Judge King has established rules and procedures which he expects court personnel to follow and, if not followed, he becomes upset and criticizes those who fail to follow these rules and procedures. Judge King appears to be obsessed with detail and adherence to his rules. This can be a commendable managerial talent, no doubt traceable to Judge King's accounting background, but, unfortunately, if carried to the extreme of verbal abuse and public humiliation of court personnel as found in this Report, it is a hinderance to his effective administration of the Dorchester Court.

(a) Hiring Practices:

Judge King consults no one in hiring court personnel and consistently ignores recommendations made by the screening committee he created for the

hiring and advancement of probation officers. Judge King has made an effort to hire minorities and there is no evidence of any racial bias by Judge King in the hiring of court personnel. Judge Outlaw's constant urging of Judge King to hire minorities, however, has been ignored by Judge King and, in a conversation between Judge Outlaw and Judge King concerning the hiring of a female, preferably black, court officer, Judge King made it very clear that he would never hire a woman as a court officer. This conversation demonstrates a lack of sensitivity and recognition of need on Judge King's part, since female probation officers must now function as court officers in dealing with female defendants. Judge King's control of assignments for probation officers has also allowed him to banish to lesser more menial positions those whom he either wants to punish or who do not meet his standards of competency. For example, after Probation Officer Mary Climo filed complaints with Judge Mason's office and with Chief Justice Zoll against Judge King concerning his treatment of defendants and court personnel, she was reassigned to a clerical position in the non-support section. Judge King

often assigns line probation officers to supervise those with more seniority and has assigned to the non-support section probation officers such as McLaughlin, Sullivan, Kelly, and Spencer who have been particular targets of his abuse over the years.

(b) Control of the Court House:

For years, the telephone switchboard was located in the probation department. Judge King believed that calls were not being answered or that court personnel were making too many personal calls so he moved the switchboard to his already crowded lobby in order that he or those working under his direct control in the lobby could monitor use of the switchboard. Another example of Judge King's obsession for control of personnel at the Dorchester Court is his removal of the sign-in, sign-out list for probation personnel from the probation office to a position outside his lobby. All probation personnel are to sign-in by 8:30 A.M. and precisely at that time the list is moved into the Judge's lobby where people signing in late can be observed by Judge King or his lobby personnel. Not even this function can be delegated to CPO Fitzgerald. Another example of

disruptive action by Judge King was his sudden order to remove a female bathroom on the second floor of the court house and convert it to a lunchroom. Female employees must now share bathroom facilities on the first floor with female defendants. Several years ago, Judge King ordered that two rooms in the cellar of the court then assigned to the police be converted into a room for court officers and the police were then assigned by Judge King to a small, single room in the probation department. The court officers have little or no time to use their newly acquired facility because they are ordered to be present while Court is in session and the police find it very difficult to function in the cramped space now assigned to them. It should be noted, however, that many of Judge King's attempts to improve working conditions at the Dorchester Court may have been frustrated by lack of funds.

5. The First Session:

All defendants who appear late for the first call, which is promptly at 9:00 A.M., are defaulted and, if they appear after being defaulted, regardless of the reason, they are placed in the dock. Many are released from the

dock later in the session, but their release normally results in the assessment of costs ranging from \$50 to \$100. Judge Dolan also follows this procedure⁷. Until a few years ago, if a defaulted defendant appeared in court with a child, the defendant and child were placed in the dock with other defendants, some of whom were charged with very serious crimes. This procedure was not followed by Judge Dolan. He urged Judge King to abandon this procedure, but Judge King refused. As a result, Judge Dolan was forced to seek Chief Justice Zoll's intervention and Chief Justice Zoll ordered Judge King to stop placing defendants with their children in the dock. But immediately after this order was issued, Judge King had a new, less secure dock constructed in the back of the First Session where he would order defaulted defendants and their children placed. This new facility is referred to as the "baby dock", "playpen", or "chute" by Judge King and other court personnel. If nothing else happens as a result of this investigation, the practice of placing defendants

⁷This procedure for assessing costs against defaulting defendants has been recommended by Chief Justice Zoll. See King Exhibit 3, paragraphs 25-27 and 33.

with their children in the "baby dock" should be stopped.

The First Session is admittedly a busy place and if not controlled could be disruptive to the important judicial business being conducted in that courtroom. But Judge King's obsession with complete silence in the courtroom caused problems. During the hot summer months, he refused to allow the air conditioners to be turned on and the courtroom becomes oppressively hot. No amount of persuasion by court personnel was successful in convincing Judge King to turn on the air conditioners during these months. As a means for further insuring absolute silence in the First Session, Judge King ordered two court officers to guard the two entrances to the First Session with strict orders that no one, not even court personnel, were to enter or exit while matters are being presented to Judge King. Access to and egress from the First Session was prohibited for periods of ten to fifteen minutes throughout the court day. This practice presented several problems: court personnel could not gain access to the First Session even if requested by the other two Judges or the Clerk-Magistrate or even if their presence

was in connection with the matter then being considered by Judge King; defendants ordered into custody by Judges in the other two sessions were required to remain outside the First Session in a crowded hallway in the custody of a court officer who had to return them through the dock in the First Session to the cellblock; everyone in the First Session was confined to the courtroom while Judge King was involved with a case; and defendants were defaulted because they couldn't get into the First Session.⁸ If a court officer allowed someone to come into or leave the First Session while Judge King was conducting court business, he was immediately reprimanded by Judge King in open court. Court officers were understandably reluctant to allow anyone in or out of the First Session. This practice should be addressed administratively by Chief Justice Zoll.

Present practice is that all cases are first called in the First Session and either retained in that session for disposition or are assigned one at a time to the Second or Third Sessions. This causes a problem with case management. The other

⁸Verified on October 2, 1986 tape.

two Judges can only work as a result of cases coming from the First Session and, if they cannot inform Judge King of their availability through a probation officer or court officer because access to the session is barred, valuable court time is wasted. Another problem with case management is Judge King's "ten minute" rule which requires probation offices to return cases assigned to the other sessions if the case is not handled by the Judges in those sessions within ten minutes. Cases can bounce back and forth between the sessions which invariably causes delay and confusion for defendants. Another problem resulting from Judge King's absolute control of the daily court calendar is that he passes on cases because he doesn't want the lawyers or police officer involved in a particular case to leave the First Session if they have other matters on the list. Unfortunately, the same lawyers may have a trial and an arraignment, but because Judge King handles all arraignments, that lawyer will remain in the First Session until after the arraignment of his client which results in the trial being sent late to another session. Both Judges Dolan and Outlaw testified that this procedure routinely results in

their sitting around waiting for cases and that trials often come to their session late in the day, which requires them to stay after 4:30 P.M. to complete the day's work. Although requested by the other Judges to change this procedure or allow them to preside in the First Session, Judge King will neither relinquish control of the First Session nor change his procedure for the assignment of cases to the other sessions⁹.

Judge King's physical habits while sitting on the bench are particularly demeaning to his judicial office, although in some respects, Judge King's physical condition may contribute in part to these demeaning habits. Most witnesses interviewed stated that, with some regularity, Judge King puts his feet on the bench, spits into a basket behind the bench and crumples up court papers, throws his glasses on the bench, and abruptly leaves the bench when he is angry or frustrated. During the course of Judge King's interview, it was observed that he obtained relief from his rheumatoid arthritis by placing his feet

⁹See King Exhibit 2 for minutes of a meeting between Judges King and Dolan where these issues were discussed without resolution.

on or against a desk and he stated that his spitting in a basket results from congestion caused by another ailment. Regardless of the reason, these habits and his habit of demonstrating anger or frustration by throwing his glasses, crumpling up court papers, and abruptly leaving the bench create an atmosphere in his court that is far from the expected standard of dignity. The unfortunate atmosphere created by these habits is enhanced by the fact that Judge King seldom leaves the bench for any extended period. During the course of a court day, Judge King will take only short ten to fifteen minute breaks which is obviously demanding on him physically and which could be relieved with longer absences from the bench. Judge King's obsession for work causes obvious attendant problems for lawyers and court personnel who themselves must work at Judge King's pace, often without adequate time for lunch or a break from the intensity and stress of the First Session. The other two Judges take breaks and a normal lunch period. Regardless of the number of hours Judge King spends on the bench, he routinely stays in session beyond the usual court closing hour of 4:30 P.M. Court per-

sonnel, the other two Judges, and Chief Justice Zoll have repeatedly pleaded and urged Judge King to finish his session at 4:00 P.M. in order to allow court personnel to prepare for the next court day and to leave the court at a reasonable hour. As Fitzgerald's notes indicate, Judge King has ignored these pleas and requests¹⁰.

Another situation which has caused conflict at the Dorchester Court has been Judge King's directive to probation officers to report to him in the First Session when the Judges in the other two sessions are off the bench. Probation officers are uncomfortable reporting to Judge King on the working habits of the other Judges and, on several occasions, both Judges Dolan and Outlaw have confronted Judge King with the accusation that he is spying on them. The practice may be well-intentioned, but the method increases conflict in the court.¹¹

Judge King's obsession with order in the First Session is further evidenced by his requirement that five to seven court officers be assigned to

¹⁰See Fitzgerald Exhibit 1 and King Exhibit 2.

¹¹See Hayes Exhibit 1, Outlaw Exhibit 3, and Dolan Exhibit 2.

his session, one each to the other sessions, and normally none as security to keep order in the main court hallway. In the First Session, two court officers are assigned to guard the two doors and the others to specific locations within the courtroom. If additional court officers are available (for a long period there were two vacancies), they also are assigned to the First Session.

Judge King's running of the First Session is evidence of his obsession with rules which he alone establishes and which, although laudable for their intended results of efficiency in a busy court, tend to be counter-productive in practice and create a tense atmosphere that is intimidating for many lawyers, defendants, witnesses and court personnel who must appear in his Court.

6. Judge King's Treatment of Court Personnel, Defendants, Lawyers, and Witnesses with whom he deals in his official capacity as a Judge.

Judge King has established for himself and others who work under his supervision and control (which is practically everyone in the Dorchester Court) a high standard of performance. Almost every witness interviewed acknowledged that Judge

King gives a 110% effort to his work and demands the same of all court personnel. The best evidence of Judge King's philosophy with respect to his administration of the Dorchester Court and his treatment of those who work or appear in his court are his often quoted maxims. These maxims were often repeated by the witnesses interviewed and by Judge King himself during the course of his interview.¹² In reference to his own physical ailments, Judge King states, "You got to play hurt"; in reference to his strong feeling of family, he states, "Who is home taking care of the kids"; in reference to his own performance as a Judge, he states, "Doing good rather than looking good"; in reference to his obsession with non-support, he states, "Non-support is the greatest crime against humanity"; but the maxim that is the genesis of most of his problems at the Dorchester Court is: "Confrontation begets resolution". This latter maxim is not directed to a select few, but is a description of Judge King's treatment of all people he deals with in his official capacity as a Judge.

¹²See Shakur Exhibit 1, "The Wit and Wisdom of the King", for a partial list of these maxims.

The treatment of court personnel and others by Judge King, which is described below, represents a pattern of behavior that has occurred practically on a daily basis for a period of years.

(a) Treatment of Court Personnel:

Included in this category are probation officers, court officers, and clerks.

(i) Probation Officers:

Judge King demands that probation officers appearing in his court be prepared and that they work a full day. Probation officers who are not prepared are reprimanded in open court. In a loud voice, Judge King will criticize a probation officer's performance with remarks such as, "Why don't you know that?"; "Go get that information"; "Get out and come back with your supervisor"; "Sit down"; and "What are you doing here?". Specific examples of this treatment while court was in session are as follows: to Assistant Chief Probation Officer Pearles Jones, "Sit down, I didn't call you yet"; to Probation Officer Ann Marie McDonough on February 10, 1983, "Get Out"; and on another occasion "Little girl, you can put your lunch over there on the bench and then come up here"; to Probation Officer Robert Spencer, "I

don't know whether I should send you or the defendant to jail"; to Probation Officer Della Rice, on December 20, 1985, "What is she doing here?"; in open court on October 2, 1986, "I see Mr. Fitzgerald going to the bank without signing in or out. He leads by example."¹³ These remarks may not seem abusive out of context, but Probation Officer Maureen Jones testified that she left the First Session more than once in tears and, on her last day, she had had enough and turned to leave the First Session with Judge King yelling for her to come back. When she kept going, he ordered the court officers to stop her. They did not and she left the session for the last time. On May 13, 1986, Probation Officer Jean Sweet left Judge King's lobby in tears after being told she would lose her job if she failed to abide by his "ten minute" rule. Probation Officer Della Rice was also reduced to tears because of the remarks made to her by Judge King. Several probation officers, such as Frank Kelly, James LeRoy (Bobby) Spencer, Robert Sullivan, and Jim McLaughlin have been particular target for Judge King's remarks. Other

¹³Verified by October 2, 1986 tape.

probation officers have observed Probation Officers Kelly, Sullivan, and McLaughlin trembling before and during their appearances before Judge King. The performance of Probation Officers Kelly, Spencer, Sullivan, and McLaughlin may not equal the standard of performance demanded by Judge King for probation officers, but their treatment by Judge King in open court in front of their probationers is demeaning to them personally and undermines the confidence probationers should have in their probation officers. The most disturbing fact concerning Judge King's treatment of these probation officers and certain former probation officers is that the weaker personalities seem to be particular targets for Judge King's abusive remarks.

Judge King's obsession in making probation officers work hard is evidenced by the following incidents: in 1982, Probation Officer Kelly was in the main hallway going to the probation office when Judge King emerged from his lobby in robes and pursued Probation Officer Kelly, yelling for him to get to work. Judge King caught up with Probation Officer Kelly before he reached the entrance to the probation office, and, in front of

witnesses, grabbed Probation Officer Kelly by the shoulders, turned him around and shoved him toward the stairs which lead to Kelly's office on the second floor; in 1984, Judge King followed Probation Officer Spencer upstairs to his office and, as Spencer was taking off his coat and putting down his tote bag, a toothbrush and washcloth fell out onto the floor. Judge King stated, "What is this? No washcloths or toothbrushes. Get to work"; and in 1981 while former Probation Officer John Taylor was in Judge King's chambers for a meeting concerning Taylor's job performance, Judge King got out of his chair and approached Taylor in anger slamming his fist into his other hand. On September 25, 1985, Judge King was on the bench and, while court was in session, got up and went to the window, and seeing Probation Officer Sullivan and Assistant Chief Probation Officer Penisi outside walking from the trailers to the court, banged on the window waving his hands for them to get into court.

Judge King's abusive treatment of probation officers extends beyond the court premises. At a court sponsored Christmas party in 1982, which was attended by over 100 people, including court per-

sonnel, their husbands and wives, lawyers, police officers, and friends of the Court, Judge King was seated at a table with other court personnel when Marie McEachen, who was 18 or 19 years old at the time and had been employed at the Court for only two months, approached Judge King to wish him a Merry Christmas and Happy New Year. Without any provocation, he called her a "bitch". Ms. McEachen left the party shortly after this incident. Later that evening, Judge King and then Probation Officer David Napolitano got into a shouting match where foul language was exchanged while they were sitting together with others at Judge King's table. At some point during this exchange, Judge King suggested that they step outside to resolve the matter. Probation Officer Napolitano agreed and both went outside, followed by Dwyer and Fitzgerald. Once outside, angry words were again exchanged, but, before any physical contact was made by either, Fitzgerald physically restrained Probation Officer Napolitano and Dwyer restrained Judge King.¹⁴ After a while,

¹⁴Incredibly, Napolitano denied the confrontation explaining that he and Judge King stepped outside into the December cold to discuss a case. Judge King acknowledged the incident, but denied that he intended to fight Napolitano. After the incident, Judge King nicknamed Napolitano "Rocky".

Judge King returned to the party and Probation Officer Napolitano and Fitzgerald left the party. Almost every person attending the party heard of the incident, and court personnel not attending the party heard of the incident during the next few days. In 1981 or 1982, Judge King was invited to a court party at Sonny's in Adams Square. There were about 25 to 30 court employees at the party and, after some had left, a patron came up to Judge King and angrily requested that he be more quiet. Shortly thereafter, Judge King left Sonny's. This incident was not solely caused by Judge King, since any large gathering of fellow workers in a public restaurant can result in annoying noise to other patrons. Another incident occurred involving Judge King and Probation Officer Gully in July 1985 at a gathering of court personnel at Burke's Tavern following Fitzgerald's mother's wake. At some point after Judge Dolan and other court personnel had left, Probation Officer Gully found himself seated next to Judge King. Probation Officer Gully remarked that it was tough to lose a mother and it was a compliment to Fitzgerald that Governor Dukakis had attended the wake. Judge King became angry, referred to

Gully as a "wise guy" and using abusive language, threatened to fight Probation Officer Gully. Probation Officer Gully then left the table with another probation officer who witnessed the conversation.¹⁵

(ii) Court Officers:

Judge King habitually admonishes court officers in open court for any failure to follow his procedures. These admonitions usually occur if a court officer allows someone to enter or leave the session while Judge King is conducting an arraignment, etc., or if the court officer is standing in the wrong location or talking to a lawyer or police officer. In these instances, Judge King will either stop what he is doing or in a loud voice state, "Stand in here, you got that, by the lady"¹⁶; "Who let him (her) in"; and "Keep that door closed". On one occasion, Judge King was in his chambers with Judge Dolan and others when he

¹⁵This was not the first confrontation between Judge King and Probation Officer Gully. On an earlier occasion, Probation Officer Gully became angry with Judge King for a sarcastic remark he made to Probation Officer Mary Climo while he was leaving a Dorchester Restaurant (Naninas). Judge King avoided any confrontation with Probation Officer Gully on this occasion.

¹⁶Verified by tape of May 14, 1986.

interrupted the meeting to order Court Officer Walter Reed to unfold his arms and put them by his side. Judge King has also given similar orders to other court personnel and defendants in open court when they appear before him with arms folded across their chest.¹⁷ On another occasion, Judge King asked Court Officer James McDonough to buy him some cigarettes. McDonough refused and Judge King then ordered McDonough to accompany him while he went to a nearby store to buy cigarettes. Judge King acknowledges the incident, but stated he wanted protection in leaving and returning to the court. It appears that what he actually wanted was to demonstrate to McDonough who was in control at the Dorchester Court.

(b) Treatment of Lawyers:

Although there were allegations that Judge King mistreated lawyers, the results of this investigation revealed no specific facts that would support those allegations.

(c) Treatment of Defendants:

Judge King takes particular care in informing defendants of their rights, takes an interest in

¹⁷See Shakur Exhibit 1, "Wit and Wisdom of the King".

dant is found not guilty, the non-support case is still pursued. The best evidence of the efficiency of this procedure is the 1985 Annual Report of the Massachusetts Trial Court which statistically shows the Dorchester Court with the second highest number of support cases of all the District Courts of this Commonwealth.¹⁸ If a defendant is unable to pay support as ordered by Judge King, he or she can avoid incarceration by participating in the Community Service Program. Defendants can satisfy in whole or in part their obligations of support or court costs by electing to work in the Community Service Program at \$4.00 an hour. The concept for the Community Service Program was originated by Judge King and is perceived by community leaders as a benefit to the Community and to some defendants who have obtained jobs through his program. Judge Dolan has adopted the concept of the Community Service Program, but Judge Outlaw has questioned its constitutionality on the basis that an indigent defendant has no alternative but to participate in the program or be incarcerated. Questions concerning the amount

¹⁸Commissioner's Exhibit 1, pages 60-61.

and attempts to work with habitual offenders, and through his dispositions gives many defendants a second chance. Judge King has been criticized for his overzealous approach to non-support cases, his failure to order high bail, and his reluctance to grant relief to those seeking protection pursuant to c.209A of the General Laws.

There is no question that Judge King pursues with diligence those persons who fail to support their families or illegitimate children. When defendants appear before him charged with minor or serious crimes, he instructs the probation officer to check the Court's records to see if that defendant is also a defendant in a non-support case, to check welfare records to see if the defendant's dependents are on welfare, and to obtain directly from the defendant a complete family history including illegitimate children. If there is an issue of support involving that particular defendant, the probation department, through the welfare office, is instructed to bring a complaint for non-support. The eventual resolution of the defendant's case will certainly involve the payment of support as a condition of probation if the defendant is not incarcerated. If the defen-

of support ordered by Judge King in non-support cases are judicially reviewable as of right and are beyond the scope of this investigation. Judge King's use of the Community Service Program has been endorsed by Chief Justice Zoll as a guideline for all Justices of the District Courts and is therefore, beyond the scope of this investigation.¹⁹ Judge King's practice of using the Court as a means for initiating the investigation and prosecution of non-support cases may also be judicially reviewable, but might better be considered administratively by Chief Justice Zoll for appropriate action. Although this practice may be within the scope of this investigation, neither any directive from Judge Zoll nor any Appellate case has been revealed that would prohibit Judge King from utilizing this practice and, therefore, no finding is made relative to Judge King's use of Court personnel to investigate and prosecute non-support cases.²⁰

There have been allegations that Judge King has consistently refused to grant relief to per-

¹⁹See King Exhibit 3, paragraph 25 and 33.

²⁰See, In the Matter of Donohue, (1983) 390 Mass. 514, 517.

sons seeking relief pursuant to c.209A of the General Laws. Particularly, it is alleged that Judge King has refused to grant relief under paragraph B of Abuse Petitions (order to vacate the premises) and has ignored Chief Justice Zoll's written guideline to District Court Justices for handling of abuse cases. Aside from general assertions that Judge King refused to grant relief under paragraph B in those cases, the only statistic presented during this investigation was Judge King's own survey over a one year period which indicated that he granted paragraph B relief in over 70% of his cases. Since this figure seems reasonable and since relief under 209A is discretionary, no finding is made with respect to Judge King's orders in 209A cases. Judge King has acknowledged that he only glanced at Chief Justice Zoll's guidelines for 209A cases when it was received, but that he has now read those guidelines twice in the past two months. Since Judge King was at least aware of their existence and since there is no Rule, Statute or case law that requires a Judge to strictly follow these guidelines, no finding of misconduct is found concerning that issue.

It should be pointed out, however, that Judge King's treatment of persons seeking 209A relief follows a pattern of conduct similar to his treatment of all other persons appearing in his Court and involves injudicious remarks made to persons appearing in his Court which remarks are humiliating and demeaning. To women seeking 209A relief, the following remarks have been made: "What did you do to make him hit you"; "Well, I'm not putting him out, this isn't Probate Court. You go there for a divorce"; "What did you do, drive him to drink"; "You married him"; "You're not dealing with a cabbage patch doll here, it's a child"; "I'm not going to put him out unless you get a non-support complaint"; and "You're not going to get a quickie divorce in this Court". The following are examples of Judge King's remarks to defendants: to a female defendant: "Next time you come to Court wear a bra"; to an obese, female defendant: "Maybe if you tried running around the block for a few times a day, you wouldn't have time to write bad checks."; to a Vietnam Veteran: "No wonder we lost the war";²¹ to a defendant

²¹This remark, although humiliating to the defendant, should not be misconstrued. It was not intended by Judge King as disrespect for veterans but is rather an example of his poor judgment in attempting to be humorous. It was not funny.

whose concerned mother was trying to talk to her son in court: "Who's that bimbo"; to a defendant whose sentence he stayed because the defendant had contracted AIDS: "Enjoy the sun and sand of Florida where you got the sad news";²² to any defendant who appeared before him with his or her arms folded across their chest: "Put your hands down"; and to a defendant in a surrender hearing who was accompanied by his wife, son and mother: "In my day the men worked and the women stayed home." These are just a sampling of remarks made to defendants on a regular basis by Judge King.²³

(d) Treatment of Police Officers:

Judge King's treatment of police officers mirrors that of his treatment of court personnel. Most of the police officers interviewed are seasoned police officers and described Judge King's treatment of them and other police officers as demeaning and humiliating. Some police officers were more tolerant of Judge King's treatment, but most acknowledged harsh treatment by Judge King which usually took the form of his speaking

²²Verified by tape of October 30, 1986.

²³For other examples, see Shakur Exhibit 1, "Wit and Wisdom of the King".

to them in an impolite and loud tone and not giving them an opportunity to be heard. The results of this investigation reveal a consistent pattern of abusive conduct by Judge King in his treatment of all persons who appear before him in his capacity as a Judge.

7. Chief Justice Zoll's Directives to Judge King:

Over the past several years, Chief Justice Zoll has attempted to deal with the several complaints his office received concerning Judge King's treatment of court personnel. On at least two occasions in the past several years, Chief Justice Zoll has reassigned Judge King to other courts but these "cooling off" periods have done little to change Judge King's attitude toward or treatment of court personnel. At a meeting held in Chief Justice Zoll's office on March 19, 1986 involving the Chief Justice, Judge King and Dwyer, Judge King was ordered to communicate with and be pleasant to court personnel, close court on time and stop going to Naninas which is a local restaurant frequented by Judge King and certain lawyers on a regular basis. As previously noted, Judge King did not change his attitude or treat-

ment of court personnel and as Fitzgerald's notes indicate, the First Session continued on a regular basis to last beyond the normal closing hour. Judge King also continued to go to Naninas with certain lawyers on a regular basis following this meeting. There was no evidence that Judge King was disruptive or abusive at Naninas either before or following this meeting and those who went to Naninas with Judge King stated that court business was usually discussed on those occasions. Judge King's explanation for his continued trips to Naninas was first, he has a right to go where he wants and second, he was meeting with a former president (Shakur) and present president of the Dorchester Bar Association. Both are valid explanations except that Judge King's conduct in this instance indicates a conscious decision by him to ignore Chief Justice Zoll's order. Furthermore, such conduct continued an appearance of impropriety, since Judge King had known of allegations that he met regularly at Naninas with certain lawyers of whom it was alleged, received favored treatment in his Court. Except for the appearance of impropriety, there were no facts presented during the course of this investigation

which would indicate that anyone received favorable treatment by Judge King.

8. The Lisa May Case.

On February 24, 1985, Lisa May was charged with operating a motor vehicle while under the influence of alcohol.²⁴ On June 13, 1985, Lisa May was found not guilty of this charge by Judge King. Prior to hearing this case, Judge King knew and had been informed by Dwyer that Lisa May was the daughter of Paul May who had served in the cabinet of Judge King's brother when he was Governor. Reference to this case in this Report is limited to a finding that Judge King failed to avoid an obvious appearance of impropriety in handling this case and should have either assigned it to another session, or if none was available as alleged by Judge King, continued the case to another date when another Judge would be available to hear the case.

CONCLUSION

Canon 1 of the Code of Judicial Conduct provides that in part:

²⁴Commissioner's Ex. 2; complaint and related court documents concerning Commonwealth v. Lisa May, Docket No. MV 69084.

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

" . . . A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be perserved."

Canon 2 of the Code of Judicial Conduct provides as follows:

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

"(A) A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidences in the integrity and impartiality of the judiciary.

(B) A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness."

Canon 3 of the Code of Judicial Conduct provides in part:

"(A) Adjudicative Responsibilities.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court offi-

cials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law . . ."

"(B) Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials . . ."

"(C) Disqualification

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
. . ."

This investigation concludes that Judge King's treatment of court personnel, defendants and witnesses who appear in his Court is in violation of Canons 1, 2A, 3(A)(3), and 3(A)(4); his refusal to follow Chief Justice Zoll's directive in refraining from going to Naninas with certain lawyers on a regular basis was in violation of Canons 2, 2A and 2B; his handling of the Lisa May case was in violation of Canons 2, 2A, 2B and 3(C)(1); his public confrontations with court personnel is in violation of Canons 1, 2, 2A and 3(A)(3); his refusal to follow Chief Justice

Zoll's orders relative to his administration of the Dorchester Court and his actual administration of the Dorchester Court is in violation of Canon 3(B)(1); and his demeanor on the bench is in violation of Canons 1, 2, 2A and 3(A)(3).

RECOMMENDATION

Although this investigation and Report concludes that Judge King has violated several of the Canons of Judicial Conduct, it is recognized that neither Judge King nor his counsel were present to confront or cross examine persons interviewed during the course of this investigation or to object to questions asked of witnesses by the Commissioner or to challenge the introduction of exhibits received by the Commissioner.²⁵ Judge King is entitled to respond to these charges and to participate in person and with counsel in a formal hearing where these charges must be proved.

Therefore, the Special Master and Commissioner recommends that the Supreme Judicial Court immediately take the following action in response to the results of this investigation:

²⁵Clearly, many of the documents accepted as Exhibits during the course of this investigation would not be admissible as evidence in a hearing in connection with formal proceedings initiated against Judge King.


1. That this Report, the recorded testimony of witnesses and exhibits be forwarded to the Commission on Judicial Conduct ("The Commission") with instructions for it to institute formal proceedings against Judge King consistent with the findings and conclusions of this Report in accordance with Rule 13 of its Rules and that any other proceedings presently pending before the Commission against Judge King be consolidated for hearing pursuant to Rule 16 of its Rules;

2. That this Court exercise its power of general superintendence of the Massachusetts Judiciary and order that Judge King be temporarily suspended from his duties as First Justice of the Dorchester Court until all charges pending before the Commission against Judge King are resolved; that during this period, Judge King be allowed to sit as a Justice of the District Court by assignment from Chief Justice Zoll; that during this period, Judge Dolan be appointed to assume the duties of First Justice of the Dorchester Court; and, that both Judges Dolan and Outlaw be allowed to resume their appointed duties as Justices of the Dorchester Court.

In support of this recommendation, the Special

Master and Commissioner states that if the facts found in this Report are proved in formal proceedings before the Commission against Judge King, there is a substantial likelihood that Judge King will be disciplined and further, if Judge King is allowed to return to the Dorchester Court during the pendency of the action recommended in this Report, many of the witnesses interviewed may be intimidated from further participation in this matter. Many witnesses expressed that fear during their interviews and in order to insure a fair and impartial hearing in this matter, it is necessary that Judge King be temporarily removed from the Dorchester Court until final resolution of this most unfortunate affair.

Respectfully submitted,



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